

RECORDATION NO. 6009 Filed & Recorded  
NOV 29 1968 - 2 25 PM  
INTERSTATE COMMERCE COMMISSION

# GRAND TRUNK WESTERN RAILROAD COMPANY

## 1968 RAILROAD EQUIPMENT LEASE FINANCING

FINANCE AGREEMENT  
CERTIFICATE OF INTEREST  
CONDITIONAL SALE AGREEMENT  
AGREEMENT AND ASSIGNMENT  
LEASE OF RAILROAD EQUIPMENT  
ACQUISITION AGREEMENT  
TRUST AGREEMENT  
GUARANTY AGREEMENT  
dated as of November 26, 1968

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THE CONDITIONAL SALE AGREEMENT, AGREEMENT AND ASSIGNMENT and  
LEASE OF RAILROAD EQUIPMENT were filed and recorded with the Inter-  
state Commerce Commission pursuant to Section 20c of the Interstate  
Commerce Act on November ..., 1968 at ..., Recordation No. ....

**FINANCE AGREEMENT**, dated as of November 20, 1968, among MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Agent (the "Agent"), GENERAL ELECTRIC CREDIT CORPORATION, a New York corporation ("GECC"), GECC LEASING CORP., a Delaware corporation ("Leasing"), and the parties including GECC named in Schedule A hereto (collectively the "Investors" and individually the "Investor").

W I T N E S S E T H :

WHEREAS, concurrently with the execution and delivery of this Finance Agreement, Leasing and Grand Trunk Western Railroad Company, a Michigan and Indiana corporation (the "Guarantor") are entering into a conditional sale agreement dated as of the date hereof substantially in the form annexed hereto as Exhibit B with PULLMAN, INCORPORATED (Pullman-Standard division), a Delaware corporation, and THRALL CAR MANUFACTURING COMPANY, an Illinois corporation, for the purchase therefrom of the railroad equipment described in Schedule A to such conditional sale agreement (such agreement being hereinafter called the "Conditional Sale Agreement"; PULLMAN, INCORPORATED (Pullman-Standard division), and THRALL CAR MANUFACTURING COMPANY being hereinafter called collectively the "Manufacturers" and individually a "Manufacturer"; and such railroad equipment being sold pursuant to the Conditional Sale Agreement being hereinafter collectively called the "Equipment") for an aggregate estimated purchase price of \$4,908,000;

WHEREAS, as more fully set forth in Exhibit B, the Conditional Sale Agreement is to provide, among other things, for the payment in 60 consecutive quarterly instalments of the portion of the indebtedness of Leasing payable

pursuant to subparagraph (b) of the third paragraph of Article 3 of the Conditional Sale Agreement in respect of the purchase price of the Equipment (such portion of the indebtedness under the Conditional Sale Agreement being hereinafter called the "Conditional Sale Indebtedness"), together with interest on the Conditional Sale Indebtedness payable quarterly on the dates provided for in the Conditional Sale Agreement, at the rate of  $7\frac{1}{4}\%$  per annum;

WHEREAS, Leasing will execute and deliver a Lease of Equipment to be dated as of the date hereof, substantially in the form annexed hereto as Exhibit E (said Lease of Equipment as the same may be amended, modified or supplemented from time to time being the "Lease"), between Leasing, as lessor, and the Guarantor, as lessee, whereby, subject to the terms and conditions set forth therein, Leasing agrees to lease to the Guarantor, and the Guarantor agrees to lease from Leasing, the Equipment on the date such Equipment is delivered by the Manufacturer thereof to, and accepted by, Leasing under the Conditional Sale Agreement and the Guarantor agrees to unconditionally guarantee all sums payable by Leasing or any assigns of Leasing under the Conditional Sale Agreement (except amounts payable pursuant to Article 3(a) thereof). A separate agreement, in the form annexed hereto as Exhibit F, is to provide for the unconditional guaranty of the obligations (including the guarantees and indemnities) of the Guarantor under the Lease by Canadian National Railroad Company, a corporation duly organized and existing under the laws of Canada ("Canadian National");

WHEREAS, the Conditional Sale Agreement and the Lease are to provide for the assignment by Leasing to the Trustee (hereinafter defined) of all of Leasing's estate, right, title and interest in and to the Equipment, the Conditional Sale Agreement and the Lease, whereupon Leasing

will have no further obligations under such Conditional Sale Agreement or such Lease;

WHEREAS, concurrently with the execution and delivery of the Lease and the assignment of such Lease and the Conditional Sale Agreement, Bankers Trust Company will enter into the Trust Agreement (the "Trust Agreement"), in the form of the copy heretofore delivered to the Guarantor and each of the Investors, with Leasing (said Trust Company and any successor trustee appointed in accordance with the provisions of the Trust Agreement being the "Trustee"), and pursuant to which Trust Agreement the Trustee agrees, among other things, to hold the Trust Estate defined in Section 1.01(k) thereof (the "Trust Estate") for the benefit of Leasing as therein specified; and

WHEREAS, the Agent is willing to acquire, on the terms and conditions set forth in an Agreement and Assignment, dated as of the date hereof substantially in the form annexed hereto as Exhibit C (such Agreement and Assignment being hereinafter called the "Assignment"), the right, title and interest of each Manufacturer under the Conditional Sale Agreement and to acquire the Equipment for a consideration equal to the Conditional Sale Indebtedness (hereinafter defined), all upon and subject to the terms and conditions hereinafter set forth;

Now, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter contained, the parties hereto hereby agree as follows:

SECTION 1. *Leasing's Contribution to Purchase Price of the Equipment.* Subject to the terms and conditions of this Finance Agreement and the Conditional Sale Agreement, Leasing hereby agrees to contribute, at any time from the date hereof to and including March 31, 1969, to

the payment of the Purchase Price (hereinafter in this Section defined) of the Equipment by paying an amount equal to not less than 30% of the Purchase Price of such Equipment (such portion of the Purchase Price of the Equipment being herein called "Leasing's Contribution"). The "Purchase Price" of the Equipment shall mean an amount equal to the aggregate Purchase Price payable to each Manufacturer for that portion of the Equipment delivered by such Manufacturer pursuant to Article 3 of the Conditional Sale Agreement on the date (the "Settlement Date") fixed for payment for such Equipment as set forth in said Article 3.

SECTION 2. *Investors' Contributions and Certificates of Interest.* Each of the Investors will pay to the Agent by certified or official bank check in New York Clearing House funds, not later than 11:00 A.M. New York Time on the date set forth opposite each Investor's name under "Date of Deposit" (the "Date of Deposit") the amount set forth opposite each Investor's name under "Investor's Contribution", all as set forth in Schedule A hereto, plus accrued interest at 7 $\frac{1}{4}$ % from Date of Deposit by GECC on such amount. Not less than three business days prior to each Date of Deposit, the Agent will inform the Investor of the total amount to be paid to the Agent (including accrued interest).

Upon receipt of the payment or payments from GECC, the Agent will execute and deliver to GECC one or more certificates of interest, in the form annexed hereto as Exhibit D. Upon receipt of the payments to the Agent by each other Investor, GECC (after it has received payment from the Agent) will return to the Agent certificates of interest sufficient to represent the Investor's interest and the Agent will reissue a certificate or certificates in the

amount or amounts specified to the Agent by such Investor. The certificates of interest, in the form annexed hereto as Exhibit D, which form is hereby approved by the Investors, shall, when issued to each Investor, contain the appropriate information with respect to each Investor as set forth in Schedule A and shall be dated as of the Date of Deposit by GECC. Moneys so deposited with the Agent as provided in this Section, any Investments (as defined in Section 4 hereof) purchased with such moneys, and any proceeds thereof or interest thereon, or deficiency in respect thereof paid by Leasing as provided in Section 6 hereof, are hereinafter referred to as "Deposited Cash".

SECTION 3. *Deposited Cash.* The Agent will hold the Deposited Cash and the rights under the Conditional Sale Agreement acquired under the Assignment and title to the Equipment following its delivery and acceptance thereunder, as provided in the Conditional Sale Agreement and the Assignment, for the benefit of the Investors in accordance with their respective interests therein as such interests shall from time to time appear. The interests of the Investors in and to Deposited Cash and in the Conditional Sale Indebtedness (as such term is defined in Article 3 of the Conditional Sale Agreement) shall be in proportion to their respective investments from time to time outstanding, plus interest accrued and unpaid thereon.

The Agent agrees to assign, transfer and set over, and does hereby assign, transfer and set over, to each Investor an interest in a principal amount equal to the proportionate investment of such Investor under this Finance Agreement in the instalments of the Conditional Sale Indebtedness and in all moneys and other property from time to time held by the Agent under this Finance Agreement, together with all interest payable in respect thereof, it being understood

that each Investor shall have the unconditional right to receive and collect such principal and interest directly from the Guarantor of the Conditional Sale Indebtedness and from Canadian National as guarantor of the Guarantor's obligations, *provided, however*, that no action may be taken with respect to the Equipment except by the Agent as provided in Section 20(c) of this Finance Agreement.

SECTION 4. *Investment of Deposited Cash.* The Agent shall, upon written request of Leasing, so long as no event of default known to the Agent shall have occurred and be continuing under the Conditional Sale Agreement, invest and reinvest Deposited Cash in (i) marketable securities issued or guaranteed by the United States of America or any of its agencies or (ii) commercial paper of GECC, or (iii) commercial paper rated "prime" by a national credit agency or (iv) time certificates of deposit which shall have been issued by a member bank of the Federal Reserve System having a combined capital and surplus of at least \$20,000,000 or (v) such bankers' acceptances and other bills of exchange of the kind and maturities made eligible, pursuant to law, for purchase in the open market by Federal Reserve Banks, provided that the accepting bank is a member bank of the Federal Reserve System and has a combined capital and surplus of at least \$20,000,000, as may be specified by Leasing in such written request (such marketable securities, commercial paper, certificates of deposit and bankers' acceptances being herein called "Investments"), *provided, however*, that such Investments shall have maturities no later than one year after the date of purchase thereof. Any interest received by the Agent on any Investment shall be held by the Agent and applied as hereinafter provided. Upon any sale of or collection at maturity of any Investment, the proceeds thereof, plus any interest received by the Agent thereon, shall be held by the Agent for

application pursuant to this Agreement except that any excess of such proceeds and interest over (i) the cost thereof (including accrued interest) and (ii) any interest received by the Agent thereon shall be paid by the Agent to Leasing so long as, to the knowledge of the Agent, Leasing or the Trustee is not in default hereunder. Leasing agrees, upon request of the Agent, to pay to the Agent all expenses incurred by the Agent in connection with the purchase and sale of Investments together with an amount equal to any deficiency due to the fact that the proceeds upon any sale of or collection at maturity of any Investments, plus any interest received by the Agent thereon, are less than the cost thereof (including accrued interest). Any such payments shall be applied by the Agent in like manner as the proceeds of the sale of Investments. It is understood and agreed that all Deposited Cash and Investments shall be held by the Agent solely for the benefit of the Investors and that neither Canadian National, the Guarantor, Leasing nor the Trustee shall have any interest therein.

SECTION 5. *Payment by the Agent of Balance of Purchase Price of Equipment.* After delivery to the Trustee of a Group (as such term is defined in Article 3 of the Conditional Sale Agreement) of Equipment and upon compliance in a manner satisfactory to the Agent and its counsel and to special counsel for the Investors with the terms and conditions of Section 5 of the Assignment, the Agent will:

(a) pay to the appropriate Manufacturer in accordance with the Assignment out of moneys included in Deposited Cash an amount equal to the Conditional Sale Indebtedness with respect to such Group, and

(b) if such moneys are insufficient to make such payment, promptly upon receipt of notice of Settlement Date with respect to such Group under the Con-



ditional Sale Agreement, the Agent will, prior to the Settlement Date with respect to such Group, sell Investments to produce money sufficient to make such payments. The Agent will use the funds so derived to make the balance of the payment to the appropriate Manufacturer required to be made on such Settlement Date.

SECTION 6. *Cut-off Date and Investment Surplus.* If, on the earlier of the Settlement Date last occurring under the Conditional Sale Agreement or March 31, 1969 (the earlier of said dates being hereinafter called the Cut-off Date), the aggregate amount of the Conditional Sale Indebtedness will be less than \$3,435,000 (the difference between such amounts being hereinafter called the Investment Surplus), the Agent will, four business days prior to the Cut-off Date, promptly (i) notify each Investor thereof, (ii) offer to sell to Leasing all Investments then held by the Agent at the cost thereof to the Agent and (iii) as to any of such Investments which Leasing shall not forthwith purchase from the Agent, sell such Investments. Thereafter, upon surrender by the Investors to the Agent of the certificates of interest theretofore delivered to the Investors, the Agent will (A) execute and deliver to each Investor a final certificate or certificates of interest in the amount of the actual unrepaid investment of such Investor in the Conditional Sale Indebtedness, said final certificate or certificates of interest to be in the form annexed hereto as Exhibit D, and to be dated as of the last quarterly instalment date on which payment of Conditional Sale Indebtedness was made or the Date of Deposit by GECC, if no payment of Conditional Sale Indebtedness has been made, and (B) pay to the Investors the funds on deposit with the Agent pursuant to Section 2 hereof and all proceeds of sale of Investments and interest thereon received by the Agent, together with any deficiency paid by Leas-

ing as contemplated by this Section 6, to the extent required so that each Investor will receive a payment (hereinafter called the "Excess Contribution") equal to an amount which bears the same ratio to the Investment Surplus as such Investor's aggregate investment pursuant to Section 2 hereof bears to \$3,435,000. Any remaining balance of such funds and proceeds and interest thereon received by the Agent shall be paid by the Agent to Leasing. On the Cut-off Date Leasing will pay to the Agent for the account of each Investor interest at the rate of 7¼% per annum on the Excess Contribution from the last quarterly instalment date on which payment of Conditional Sale Indebtedness was made or the Date of Deposit by GECC, if no payment of Conditional Sale Indebtedness has been made, to the Cut-off Date. All interest payments paid by Leasing to the Agent pursuant to this paragraph shall be paid to the Investors in accordance with the amounts due to each of them pursuant to the terms of this Finance Agreement and Schedule A hereto.

SECTION 7. *Investment Representations.* Each of the Investors except GECC represents that (a) it is acquiring its participation in the Conditional Sale Indebtedness, the guaranty thereof by the Guarantor and Canadian National's guaranty of the obligations of the Guarantor under the Lease, and in the certificates of interest evidencing the same (i) for its own account, or (ii) for the account of one or more pension funds, trust funds or other institutional investors for which it has sole investment discretion (except as heretofore disclosed in writing to its special counsel) or (iii) for its own account and for the account of one or more pension funds, trust funds or other institutional investors for which it has sole investment discretion (except as heretofore disclosed in writing to its special counsel); (b) such participations and certificates

of interest are being acquired for investment and not with a view to, or for sale in connection with, any distribution thereof or with any present intention of distributing or selling any thereof, subject nevertheless to any requirements of law that the disposition of its property or that of such pension funds, trust funds and other institutional investors shall at all times be within its or their control; and (c) if it is acquiring such participations and certificates of interest for the account of more than one pension fund, trust fund or other institutional investor, its decision (except as heretofore disclosed in writing to its special counsel) to purchase all such participations and certificates of interest, including such participations and certificates of interest as it may also be acquiring for its own account, is being made by the same individual or group of individuals who customarily pass on such investments so that its decision as to the purchase of all such participations and certificates of interest is the result of one study and conclusion.

SECTION 8. *Guarantor's Notice of Settlement Date.* Leasing will notify the Guarantor forthwith of the receipt by Leasing from each Manufacturer of the documents referred to in the sixth paragraph of Article 3 of the Conditional Sale Agreement. Leasing agrees to give the Agent and the Guarantor (and after the Trustee has been assigned Leasing's rights under the Conditional Sale Agreement, the Trustee will give Leasing) at least five business days' written or telegraphic notice of such Settlement Date, which notice shall specify the amount of the Purchase Price for the Group (as such term is defined in Article 3 of the Conditional Sale Agreement) and for each unit in the Group and the amount of Leasing's Contribution and the Investors' Contribution for the Group and for each unit in the Group. On or before noon on each

Settlement Date, Leasing's Contribution or a receipt from the Manufacturer for Leasing's Contribution for such Group will be made available to the Agent at its office in New York, New York.

SECTION 9. *Conditions Precedent to Leasing's Contribution.* It is agreed that the obligation of Leasing to contribute to the payment of the Purchase Price of the Equipment on any Settlement Date is subject to the conditions precedent that:

(a) the subsections (i) and (iii) of Section 3.02 of the Trust Agreement shall have been complied with in a manner satisfactory to Leasing and its counsel;

(b) GECC and each other Investor shall have deposited with the Agent the amount required to be deposited on the Date of Deposit in accordance with Section 2 hereof;

(c) no Event of Default, or any event which with the lapse of time and/or demand provided for in the Lease would constitute such an Event of Default, shall have occurred and be continuing under the Lease;

(d) Leasing shall have received counterparts or copies of the documents listed in subparagraphs (a), (b) and (c) of Section 5 of the Assignment, each in form and substance satisfactory to it and its counsel; and

(e) Leasing shall have received copies of the opinions of counsel listed in subparagraphs (d), (f) and (g) of Section 5 of the Assignment, each addressed to it or accompanied by a letter from each such counsel authorizing it to rely thereon and each in form and substance satisfactory to it and its counsel.

It is understood and agreed that Leasing shall not be required to make any payment with respect to any railroad

equipment excluded from the Conditional Sale Agreement pursuant to Article 2 thereof.

SECTION 10. *Guarantor's Indemnities.* Prior to the delivery of any Equipment under the Conditional Sale Agreement, the Guarantor shall have entered into a Lease containing an indemnity substantially in the form of Section 11 of Exhibit E hereto.

SECTION 11. *Consent to Other Documents.* Each Investor hereby consents in all respects to the execution and delivery of the Trust Agreement, in the form heretofore delivered to each of the Investors, and the Conditional Sale Agreement, the Assignment and the Lease substantially in the forms attached hereto with such modifications or changes therein as may be approved by special counsel for the Investors and communicated to such Investor prior to the execution and delivery thereof and consents to the assignment by Leasing of its rights under its Conditional Sale Agreement and the Lease and its rights in the Equipment to the Trustee; and each Investor hereby authorizes all action which may from time to time be taken by the Agent, Leasing or the Trustee in accordance with the terms of said documents.

SECTION 12. *Amendments or Termination of Other Documents.* Notwithstanding any provision of the Trust Agreement:

(a) Leasing will not, without the prior written consent of the Investors, execute or request or permit the Trustee to execute any amendment of or supplement to the Lease, or execute or consent to any waiver or modification of the terms thereof or, except in accordance with the terms thereof, cancel or terminate the Lease with respect to any portion of the Equipment

prior to the payment in full of the principal of and interest on the Conditional Sale Indebtedness;

(b) Leasing will not, without the prior written consent of the Guarantor, execute or request or permit the Trustee or any other assignee to execute any amendment of or supplement to the Conditional Sale Agreement, or execute or consent to any waiver or modification of the terms thereof while any portion of the Equipment is leased to the Guarantor under the Lease; and

(c) Leasing will not, without the prior written consent of the Investors and the Guarantor, execute or request or permit the Trustee to execute any amendment of or supplement to the Trust Agreement, or execute or consent to any waiver or modification of the terms thereof, if such supplement, amendment, waiver or modification would modify or amend any of the provisions of Article IV of the Trust Agreement.

(d) Neither Leasing nor the Trustee will, without the prior written consent of the Guarantor, execute any amendment of or supplement to the Conditional Sale Agreement or the Assignment or execute or consent to any waiver or modification of the terms thereof while any portion of the Equipment is leased to the Guarantor under the Lease.

SECTION 13. *Performance of the Trust Agreement.* Leasing hereby covenants and agrees with the Investors and for the benefit of the Guarantor to cause the Trustee to perform all of the duties of the Trustee set forth in Article IV of the Trust Agreement in accordance with the terms of said Article.

Nothing contained in this Finance Agreement shall be construed to prohibit or restrict the power of Leasing to assign its obligations under the Conditional Sale Agreement and the Lease to the Trustee or cause or permit the termination of the Trust Agreement and the trusts

created thereby in accordance with the terms of the Trust Agreement or any transfer by the Trustee of its interests in the Trust Estate pursuant to Article 12 of the Conditional Sale Agreement, Section 13 of the Lease or Section 11.01 of the Trust Agreement, provided that Leasing or the Trustee shall give prior written notice to the Guarantor and the Investors (this Finance Agreement constituting notice to the Guarantor and the Investors of the assignment by Leasing of the Lease and of its rights under the Conditional Sale Agreement to the Trustee) of any such transfer or any termination pursuant to clause (a) of Section 11.01 of the Trust Agreement occurring prior to the payment in full of the principal of, and interest on, the Conditional Sale Indebtedness. No such transfer and no termination of the Trust Agreement and the trusts created thereby shall relieve Leasing of any liability under this Finance Agreement which accrued prior to such transfer or termination and, upon any such transfer or termination prior to the payment in full of the principal of, and interest on, the Conditional Sale Indebtedness, Leasing forthwith shall enter into an agreement with the Investors and the Guarantor, in form and substance satisfactory to each of them whereby Leasing shall agree to hold and apply any and all moneys, proceeds and other property distributed as a result of such termination, and to administer or cause to be administered the Lease and all payments and proceeds thereafter received by Leasing or any other successor to the interests of the Trustee thereunder, in a manner substantially as provided in Article IV of the Trust Agreement as though Leasing or any such successor were in the place and instead of the Trustee under the Trust Agreement.

SECTION 14. *Recording.* Leasing will, at its own expense, cause the Conditional Sale Agreement, the Assign-

ment, the Lease and any amendments or supplements thereto to be filed, recorded or deposited and refiled, re-recorded or redeposited, if necessary, with the Interstate Commerce Commission and will duly cause the Lease, the Conditional Sale Agreement and Finance Agreement to be deposited and notice of such deposit given in the *Canada Gazette*, under Section 148(1) and (2) of the Railway Act (Canada) R.S.C. 1952, Chapter 234, as amended by 14-15-16 Eliz. II, Chapter 25 and otherwise as may be required by law or reasonably requested by the Trustee, Leasing, any Investor or any Vendor under the Conditional Sale Agreement, the Assignment or the Lease for the purpose of proper protection, to the satisfaction of their respective counsel, of their respective title to or other interest in the Equipment and their respective rights under the Conditional Sale Agreement, the Assignment or the Lease or for the purpose of carrying out the intention of said instruments; and Leasing will promptly furnish to the Trustee, the Guarantor, the Investors and said Vendor certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for Leasing with respect thereto, satisfactory to the Trustee, the Guarantor, the Investors and said Vendor.

SECTION 15. *Payment of Expenses.* Whether or not the transactions contemplated hereby shall be consummated, Leasing or the Guarantor and Leasing (in such proportion as they may agree upon in writing prior to or concurrently with the execution of this Agreement) will pay all reasonable costs and expenses (except the fees and expenses of counsel for each Manufacturer, but including the fees and expenses of the Agent and special counsel for the Investors) incident to the preparation, printing or other duplicating, execution, acknowledgment and delivery of this Finance Agreement, the certificates of interest, the Trust Agreement, the Conditional Sale Agreement, the



Assignment, the Acquisition Agreement and the Lease, of any instrument supplemental to or amendatory of any of said instruments, and of any certificate of the payment in full of the indebtedness in respect of the Purchase Price of the Equipment due under the Conditional Sale Agreement.

SECTION 16. *Liabilities of Leasing and the Investors.* Neither Leasing (after assignment of the Lease and of its rights under the Conditional Sale Contract) nor any Investor shall have any obligation or duty to the Guarantor or to each other with respect to the transactions contemplated hereby except those obligations or duties expressly set forth in this Finance Agreement. Without limitation of the generality of the foregoing and except as otherwise expressly set forth in this Finance Agreement, under no circumstances whatsoever shall Leasing or any Investor be liable to the Guarantor or liable to one another for any action or inaction on the part of the Trustee in connection with the Trust Agreement, the Lease, the Conditional Sale Agreement, the Assignment, the ownership of the Equipment, the administration of the Trust Estate or otherwise, whether or not such action or inaction is caused by the wilful misconduct or gross negligence of the Trustee.

SECTION 17. *Transfer of Interests.* Leasing agrees that except as contemplated in this Agreement it will not assign, convey or otherwise transfer any right, title or interest which it may have in and to the Trust Estate or under the Trust Agreement or this Finance Agreement except in accordance with the terms of Article VIII of the Trust Agreement. The Agent hereby consents to the assignment by Leasing to GECC contemplated by Article VIII of the Trust Agreement and hereby agrees not to unreasonably withhold its consent to any other assignment permitted by Article VIII of the Trust Agreement. Each Investor,

subject to the provisions of Sections 7 and 23 hereof, may assign all or any of its rights under this Finance Agreement, the Conditional Sale Agreement and the Assignment, including the right to receive any payments due or to become due to it from Leasing under the Conditional Sale Agreement or from Leasing hereunder, and may grant participation to others with respect to its interests hereunder and thereunder. In the event of any such assignment or participation any such subsequent or successive assignee or assignees or participant or participants shall, to the extent of such assignment or participation, enjoy all the rights and privileges and be subject to all the obligations of such Investor hereunder.

SECTION 18. *Guaranty.* None of the Investors shall be bound by any of the provisions of this Finance Agreement unless the Guarantor shall have entered into a Lease containing a guarantee substantially in the form of Section 14 of Exhibit E hereto and unless Canadian National shall have agreed, in form satisfactory to special counsel to the Investors, to guaranty the obligations of the Guarantor under such Lease.

SECTION 19. *Purchase of Any Investor's Interest by Leasing.* At any time after the occurrence of an Event of Default under the Conditional Sale Agreement, each Investor will, upon receipt from Leasing of an amount equal to the aggregate unpaid principal amount of such Investor's portion of the Conditional Sale Indebtedness, plus all interest accrued thereon to the date of such payment, transfer, assign and convey to Leasing all of its right, title and interest in and to the Conditional Sale Agreement, including all rights, powers, privileges and remedies thereunder (and under the guaranty by the Guarantor and under Canadian National's guaranty) in

and to the Equipment and all amounts which may be or become due or owing on account of such portion of the Conditional Sale Indebtedness and interest thereon but Leasing shall have no obligation to purchase any such Investor's interest.

SECTION 20. *Duties of the Agent.* The duties of the Agent in serving in such capacity, in the capacity of "Assignee" under the Assignment and in the capacity of "Vendor" under the Conditional Sale Agreement shall be as set out in this Finance Agreement. No additional duties shall be attributed to the Agent in serving in any of such capacities. In addition to the duties of the Agent described in Sections 2, 3, 4, 5 and 6 hereof the Agent shall have the following duties:

(a) At the time of the receipt by the Agent of any regularly scheduled payment on account of the Conditional Sale Indebtedness, the Agent shall pay to each Investor the amount due such Investor at such time according to the terms of the certificate of interest held by such Investor and pay any residue to Leasing.

(b) At the time of the receipt by the Agent of any payment resulting from an Event of Loss (as defined in the Conditional Sale Agreement) in respect of the Equipment or any portion thereof, the Agent shall on the next quarterly payment date for Conditional Sale Indebtedness pay to each Investor the Stipulated Loss Value (as defined in the Conditional Sale Agreement) of such Equipment due such Investor at such time, in accordance with the terms of the certificate of interest and the Conditional Sale Agreement.

(c) Upon the occurrence of any default described in Article 14 of the Conditional Sale Agreement (a "Default"), the Agent shall, promptly after learning thereof, give notice thereof to the Investors, and shall, thereafter, take such action permitted by the terms of Articles 14 and 15 of the Conditional Sale Agreement

as it may be directed in writing to take by Investors together holding more than 50% of the then outstanding Conditional Sale Indebtedness. If the Conditional Sale Indebtedness shall have been declared to be immediately due and payable pursuant to said Article 14, all moneys held by or coming into the possession of the Agent thereafter which are applicable to the payment of the Conditional Sale Indebtedness or interest thereon (including, without limitation, the net proceeds of any repossession and sale or lease of any of the Equipment, after deduction of all expenses, including reasonable counsel fees, incurred by the Agent in connection with such repossession and sale or lease and otherwise in connection with the Conditional Sale Agreement and the Assignment, for which the Agent shall not theretofore have been reimbursed) shall be distributed, pro rata, among the Investors in accordance with their respective interests in the then outstanding Conditional Sale Indebtedness.

(d) Should the Agent receive the assignment of Rent due under the Lease contemplated by Article IV of the Trust Agreement, the Agent agrees to assume all of the duties of the Trustee to make all disbursements pursuant to such Article IV and agrees not to assign such assignment and, prior to payment in full of the Conditional Sale Indebtedness, not to release such assignment and to apply all payments made to the Agent under such assignment to the discharge of the Guarantor's obligations to make payments under the Lease.

(e) From time to time until the Conditional Sale Indebtedness shall have been paid in full, the Agent shall distribute promptly to each Investor (who shall have requested same in writing) copies of all reports and other documents received by the Agent from the Trustee, Leasing, the Guarantor and any Manufacturer with respect to the Equipment, the Lease and the Conditional Sale Indebtedness.

(f) From time to time invest in the manner provided in Section 4 hereof for investments of Deposited

Cash any amounts received between the dates on which payments are due to the holders of certificates of interest and shall apply such payments on the next payment date toward the Conditional Sale Indebtedness (and interest thereon) due on such date and on such date remit any surplus to the Trustee.

SECTION 21. *Indemnity by the Investors.* So long as, to the knowledge of the Agent, no Default shall have occurred and be continuing, the Agent may, in its sole discretion, exercise or refrain from exercising any powers or take or refrain from taking any action under the Conditional Sale Agreement or the Assignment except as otherwise specifically provided in this Finance Agreement. The Agent shall incur no liability hereunder or otherwise:

(a) in acting upon any notice, certificate, warrant or other paper or instrument believed by it to be genuine and purporting to be signed by the proper person or persons; or

(b) with respect to anything which it may do or refrain from doing in the exercise of its sole discretion, or which it may deem necessary or desirable in the premises,

except liability resulting from its wilful misconduct or gross negligence. In the event the Agent shall take any action upon the occurrence of a Default pursuant to Section 20(c) hereof, the Investors shall indemnify the Agent, in proportion to their respective interests in the then outstanding Conditional Sale Indebtedness, against any liability or expense, including reasonable counsel fees, in connection with any such action. Each Investor agrees, whether or not any of the transactions contemplated by this Finance Agreement shall be consummated, to assume liability for, and to indemnify in the same proportion the Agent and its successors and assigns, agents and servants

against, any and all liabilities, obligations, losses, penalties, actions or other matters of any nature which may be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of the Conditional Sale Agreement, the Assignment, this Finance Agreement or the Equipment, other than such as may result from the wilful misconduct or gross negligence of the Agent. The Agent may consult with legal counsel of its own choice and shall be under no liability for any action taken or suffered in good faith by it in reliance upon the opinion of such counsel.

SECTION 22. *Obligations of Leasing (or the Trustee after Assignment of the Lease):*

(a) Promptly after learning of the occurrence of an Event of Default (as defined in the Lease), Leasing shall give written notice to the Agent of the nature of such Event of Default.

(b) On or prior to the date of any regularly scheduled payment under the Lease, Leasing shall pay to the Agent, to the extent received by Leasing, the necessary amount to make the corresponding payments on account of the Conditional Sale Indebtedness.

SECTION 23. *Assignment of the Conditional Sale Indebtedness.* Subject to the provisions of Section 7 hereof, each Investor agrees that any assignment of all or any part of such Investor's interest in the Conditional Sale Indebtedness shall be made only on the following conditions:

(a) Such Investor (except for GECC with respect to assignment to the Agent) shall have notified the Agent and Leasing (or the Trustee after it has been assigned Leasing's rights under the Conditional Sale Agreement) in writing of the proposed assignment, stating the name of the assignee and the interest to be assigned;

(b) Such Investor shall have surrendered to the Agent the certificate or certificates of interest evidencing the interest to be assigned; and

(c) The Agent and the assignee (except the Investors with respect to assignments from GECC) shall have entered into a written agreement by the terms of which the assignee shall have agreed that the assignment shall be subject to all the terms and conditions of this Finance Agreement.

Upon fulfillment of the above conditions, the Agent shall execute and deliver to the assignee said certificate or certificates of interest, substantially in the form of Exhibit D hereto.

SECTION 24. *Surrender of Certificate of Interest.* Upon payment in full of the portion of the Conditional Sale Indebtedness evidenced by any certificate of interest, with all accrued interest thereon, the holder thereof shall surrender such certificate of interest to the Agent.

SECTION 25. *Resignation of the Agent.* The Agent, by giving written notice to each of the Investors that it so desires, shall be entitled to terminate its duties and responsibilities hereunder on the date (at least 30 days subsequent to the giving of such notice) stated in said notice. If, prior to the date stated in said notice, Investors holding interests totaling more than 50% of the then outstanding Conditional Sale Indebtedness shall have requested in writing that the Agent assign to a person or institution designated by such Investors all right, title and interest of the Agent under the Conditional Sale Agreement and the Assignment and in and to the Equipment, the Agent shall comply with such request. If such request is not received by the Agent on or before the date designated in said notice, the Agent shall be entitled to appoint a successor to act thereunder

(which successor shall be a bank or trust company located in the Borough of Manhattan, City and State of New York, having a capital and surplus aggregating at least \$20,000,000), and to assign to such successor, subject to the provisions of this Finance Agreement, all such right, title and interest of the Agent. Upon such assignment by the Agent to a person or institution designated by such Investors or, in the absence of such designation, to a successor appointed by the Agent, the Agent shall be thereafter relieved of all duties and responsibilities under the Conditional Sale Agreement and the Assignment and hereunder.

SECTION 26. *Notices, etc.* All notices, instructions, directions and approvals to be delivered hereunder (i) to the Investors by the Agent shall be in writing and addressed to such Investors at their respective addresses listed in Schedule A to this Finance Agreement, and (ii) to the Agent by any Investor shall be in writing signed by an officer, assistant officer, manager or assistant manager of such Investor, and the Agent may rely on any notice, instruction, direction or approval purporting to be so signed. All communications to the Agent shall be addressed to the Agent at 23 Wall Street, New York, New York 10015 Att.: Corporate Trust Department.

SECTION 27. *No Representations or Warranties by the Agent.* The Agent makes no representations or warranties hereunder. Without limiting the generality of the foregoing, the Agent assumes no responsibility with respect to (a) the validity of the Conditional Sale Agreement or the Assignment or any certificate of interest (except with respect to its own execution thereof) or any of the matters covered thereby or (b) the value of or the title to the Equipment.



SECTION 28. *Settlement of Disputes.* In the event of any dispute with respect to the delivery, ownership or right to possession of funds or documents at any time held by the Agent hereunder, or with respect to title to the Equipment or any portion thereof, the Agent is hereby authorized and directed to retain, without liability to anyone, all or any of such funds or documents of title to such Equipment until such dispute shall have been settled either by mutual agreement of all persons concerned or by final order, decree or judgment of a court of competent jurisdiction.

SECTION 29. *Miscellaneous.* This Finance Agreement may be executed by the parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. Neither this Finance Agreement nor any of the terms hereof may be terminated, amended, supplemented, waived or modified orally, but only by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification is sought. The terms of this Finance Agreement shall be binding upon, and inure to the benefit of, the Guarantor and its successors and assigns and Leasing and the Investors, their successors and, to the extent permitted by Section 17 hereof, their assigns. Each party hereto covenants and agrees with each other party hereto that it will promptly and duly execute and deliver to each such other party such further documents and assurances and takes such further action as each such other party may from time to time reasonably request in order to more effectively carry out the intent and purpose of this Finance Agreement and to establish and protect the rights and remedies created or reserved in favor of each such other party hereunder or intended so to be. This Finance Agreement shall in all respects be gov-

erned by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance.

IN WITNESS WHEREOF, the parties hereto have caused this Finance Agreement to be duly executed by their respective officers thereunto duly authorized as of the date first above written.

GECC LEASING CORP.

By \_\_\_\_\_  
Vice President

MORGAN GUARANTY TRUST COMPANY  
OF NEW YORK, *as Agent*

By \_\_\_\_\_  
Vice President

GENERAL ELECTRIC CREDIT  
CORPORATION

By \_\_\_\_\_  
Vice President

BANKERS LIFE INSURANCE COMPANY  
OF NEBRASKA

By \_\_\_\_\_

HARTFORD LIFE INSURANCE COMPANY

By -----

KANSAS CITY LIFE INSURANCE  
COMPANY

By -----  
*Vice President*

J. R. BIXBY, HENRY H. EDMISTON and  
ARTHUR L. HOLMBERG, Trustees  
Kansas City Life Employees  
Pension Trust

By -----  
*Trustee*

LINCOLN NATIONAL LIFE INSURANCE  
COMPANY

By -----

THE UNION LABOR LIFE INSURANCE  
COMPANY

By -----

## SCHEDULE A

<u>Name and Address of Investor</u>	<u>Amount of Contribution</u>	<u>Date of Deposit</u>
GENERAL ELECTRIC CREDIT CORPORATION 570 Lexington Avenue New York, New York 10021 Att.: <i>Treasurer</i>	\$3,435,000	December 30, 1968
BANKERS LIFE INSURANCE COMPANY OF NEBRASKA Cotner & "O" Street Lincoln, Nebraska 68501 Att.: <i>Financial Department</i>	\$1,000,000	February 13, 1969
HARTFORD LIFE INSURANCE COMPANY—Separate Account B Hartford Plaza Hartford, Connecticut 06115 Att.: <i>Investment Department</i>	\$ 500,000	December 30, 1968
KANSAS CITY LIFE INSURANCE COMPANY P.O. Box 1587 Kansas City, Missouri 64141 Att.: Mr. William M. Stillman, Jr. <i>Assistant Treasurer</i>	\$ 600,000	January 15, 1969
J. R. BIXBY, HENRY H. EDMISTON and ARTHUR L. HOLMBERG, Trustees Kansas City Life Employees Pension Trust P.O. Box 1587 Kansas City, Missouri 64141 Att.: Mr. William M. Stillman, Jr. <i>Assistant Treasurer</i>	\$ 85,000	January 15, 1969
THE LINCOLN NATIONAL LIFE INSURANCE COMPANY 1301 South Harrison Street Fort Wayne, Indiana 46801 Att.: <i>Securities Investment Department</i>	\$1,000,000	March 12, 1969
THE UNION LABOR LIFE INSURANCE COMPANY 850 Third Avenue New York, N. Y. 10022 Att.: Mr. George Holland <i>Vice President</i>	\$ 250,000	December 30, 1968

**EXHIBIT B**

Conditional Sale Agreement  
See Document No. 3 in this Volume

**EXHIBIT C**

Agreement and Assignment  
See Document No. 4 in this Volume

**EXHIBIT D**

Certificate of Interest  
See Document No. 2 in this Volume

**EXHIBIT E**

Lease of Railroad Equipment  
See Document No. 5 in this Volume

**EXHIBIT F**

Guaranty Agreement  
See Document No. 8 in this Volume

**DOCUMENT NO. 2**

**CERTIFICATE OF INTEREST**

**DOCUMENT NO. 2**

**CERTIFICATE OF INTEREST**

MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as agent (the "Agent"), hereby acknowledges receipt from --

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(the "Investor") of \$-----, such sum having been paid by the Investor under and pursuant to the terms and conditions of a Finance Agreement dated as of November 26, 1968 (the "Finance Agreement"), among the Agent, the Investor, the other parties named in Schedule A to the Finance Agreement and GECC Leasing Corp. ("Leasing"). By reason of such payment, the Investor has an interest equal to such sum in the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement dated as of November 26, 1968 (the "Conditional Sale Agreement"), among Pullman, Incorporated (Pullman-Standard division) ("Pullman") and Thrall Car Manufacturing Corporation ("Thrall") (Pullman and Thrall being hereinafter called the "Manufacturers"), GECC Leasing Corp., in the Conditional Sale Agreement, in the Agreement and Assignment dated as of November 26, 1968 between the Manufacturers and the Agent, in the right, title and interest of the Agent in and to the railroad equipment covered by the Conditional Sale Agreements and in and to all cash and other property from time to time held by the Agent under the Finance Agreement.

Under the terms of the Conditional Sale Agreement, subject to the right of prepayment contained therein in the event of an Event of Loss (as defined therein), such Conditional Sale Indebtedness

(a) is payable by Leasing in 60 equal consecutive quarterly level instalments on each January 1st, April 1st, July 1st and October 1st of each of the years

1969 to 1984, inclusive, commencing April 1, 1969 and ending January 1, 1984; and

(b) is payable in instalments which include interest computed on the unpaid principal portion thereof from time to time outstanding until the same shall have become due and payable at the rate of  $7\frac{1}{4}\%$  per annum; except that interest for 1968 (from and including interest for the date of issuance of this certificate) shall not be included in computing such instalments and shall be paid April 1, 1969.

All such Conditional Sale Indebtedness and interest thereon remaining unpaid after the same shall have become due and payable bears interest, to the extent legally enforceable, at the rate of 8% per annum. All payments received by the Agent in accordance with the terms of the Finance Agreement and the Conditional Sale Agreement shall be disbursed by the Agent in accordance with the terms and conditions of the Finance Agreement.

Dated: \_\_\_\_\_

MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Agent  
under the Finance Agreement

By \_\_\_\_\_  
*Authorized Officer*



**DOCUMENT NO. 3**

**CONDITIONAL SALE AGREEMENT**

**DOCUMENT NO. 3**

**CONDITIONAL SALE AGREEMENT**, dated as of November 26, 1968, among PULLMAN, INCORPORATED (Pullman-Standard division), a Delaware corporation ("Pullman"), THRALL CAR MANUFACTURING COMPANY, an Illinois corporation ("Thrall") (Thrall and Pullman being hereinafter singularly called the Vendor or Manufacturer, as more particularly set forth in Article 24 hereof), and GECC Leasing Corp., a Delaware corporation ("Leasing").

WHEREAS, concurrently with the execution and delivery of this Agreement the Bankers Trust Company (the "Trustee") and Leasing are entering into a Trust Agreement (the "Trust Agreement") dated as of the date hereof substantially in the form of Exhibit C hereto whereby, among other things, the Trustee will agree to hold all of Leasing's right, title and interest in and to this Agreement, the Equipment hereinafter referred to, the Lease hereinafter referred to and all payments or proceeds received under the Lease or after the termination thereof with respect to any portion of the Equipment (as hereinafter defined) as the result of the sale, lease or other disposition thereof or otherwise and all other monies, proceeds or property at any time received by the Trustee (all of the foregoing being the "Trust Estate") for the benefit of Leasing in accordance with the terms of the Trust Agreement; and

WHEREAS, each Manufacturer has agreed to construct, sell and deliver to Leasing, and Leasing has agreed to purchase from each Manufacturer, the railroad equipment of such Manufacturer described in Schedule A attached hereto (all such equipment described in Schedule A being hereinafter called the "Equipment"); and

WHEREAS, Leasing is executing a lease of the Equipment as of the date hereof to Grand Trunk Western Rail-

road Company, a Michigan and Indiana corporation (the "Guarantor"), subject to this Agreement, in the form of Exhibit A attached hereto (hereinafter called the "Lease") pursuant to which the Guarantor will guarantee to the Vendor the due and punctual payment of certain sums payable by Leasing under this Agreement; and

WHEREAS, each Manufacturer and Leasing are executing an agreement as of the date hereof relating to the acquisition of the Equipment, in the form of Exhibit B attached hereto (hereinafter called the "Acquisition Agreement");

Now, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, each Manufacturer will construct the Equipment to be manufactured by it at its plant as set forth in Schedule A hereto and will sell and deliver the Equipment to Leasing and Leasing will purchase from each Manufacturer and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be new standard gauge railroad rolling stock constructed in accordance with the respective specifications referred to in Schedule A hereto and in accordance with such modifications thereof as may have been agreed upon in writing by such Manufacturer and Leasing and the Guarantor (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of the Equipment will conform to all Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to

railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* Each Manufacturer will deliver the various units of the Equipment manufactured by it to Leasing, freight charges prepaid, at the point specified in, and in accordance with, the delivery schedule set forth in Schedule A hereto.

Each Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Manufacturer's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before March 31, 1969, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Vendor, Leasing and the Guarantor shall, pursuant to the terms of the Acquisition Agreement, execute an agreement subsequent hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of Leasing (who may be employees of the Guarantor), and each Manufacturer shall grant to such inspectors or such authorized representatives reasonable access to its plant. Each Manufacturer agrees to inspect materials entering into the construction of the Equipment. From time to time upon the completion of the construction

of each unit or of a number of units of the Equipment, such unit or units shall be presented to such inspector or other authorized representative of Leasing for inspection at the place designated for delivery of the Equipment and, if each such unit or units conforms to the Specifications, such inspector or representative shall execute and deliver to such Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of acceptance (hereinafter called the "Certificate of Inspection and Acceptance") stating that such unit or units have been inspected and accepted on behalf of Leasing and are marked in accordance with the provisions of Section 9(b) of the Lease. The requirements of this Section with respect to acceptance of units of the Equipment shall be satisfied by acceptance of such units of Equipment by the Guarantor in accordance with Section 2 of the Lease.

On delivery of each of the units of Equipment hereunder and acceptance thereof on behalf of Leasing as aforesaid, Leasing assumes with respect thereto the responsibility and risk of loss subject to the limitations of Article 13 hereof.

ARTICLE 3. *Purchase Price and Payment.* The base price per unit of the Equipment, exclusive of interest, is estimated in Schedule A hereto. The base price is subject to such increase or decrease as may be agreed to by such Manufacturer, Leasing and the Guarantor. The term "Purchase Price" as used herein shall mean the base price as so increased or decreased, *provided, however*, that the aggregate Purchase Price for the Equipment shall not exceed \$4,908,000.

All payments to be made by Leasing hereunder will be free of expense to the Manufacturer for collection or other charges and will be free of expense to the Manufacturer with respect to the amount of any local, State, Federal or

Canadian (Dominion or Provincial) taxes (other than net income, excess profits and similar taxes), assessments, licenses, charges, fines or penalties hereafter levied or imposed upon, or in connection with, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes, assessments, licenses, charges, fines or penalties Leasing assumes and agrees to pay in addition to the Purchase Price of the Equipment.

For the purpose of making settlement, the Equipment shall be gathered into groups of units of the Equipment, delivered to and accepted by Leasing (each such group being hereinafter called a "Group") consisting of such number of units of Equipment as shall be mutually agreed upon by Leasing and each Manufacturer from time to time; *provided, however*, the Equipment shall be delivered in not more than three Groups; and *provided further, however*, that Leasing shall not refuse to accept delivery of units of Equipment from one Manufacturer because of the other Manufacturer's failure to deliver its units of Equipment.

Leasing hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay by certified or official bank check in New York Clearing House funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) On each Settlement Date (hereinafter defined) with respect to the Group for which settlement is then being made, an amount equal to not less than thirty (30) percent of the aggregate Purchase Price of all units of the Equipment in such Group, as stated in the invoice or invoices therefor; and

(b) In 60 equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 60, result in an amount ending in an integral cent)

quarterly instalments of principal and interest at  $7\frac{1}{4}\%$  per annum on the unpaid principal amount from Date of Deposit by GECC (as defined in the Finance Agreement) an amount equal to the aggregate Purchase Price of the units of Equipment in the Group for which settlement is then being made under subparagraph (a) of this paragraph, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph; *provided, however*, that interest for 1968 (including interest from and including the Settlement Date for the Equipment in such group) shall not be included in computing such instalments and shall be paid April 1, 1969.

The first instalment of the portion of the aggregate Purchase Price of the units of Equipment payable pursuant to subparagraph (b) of the preceding paragraph (herein called the "Conditional Sale Indebtedness") shall be payable on April 1, 1969 and subsequent instalments shall be payable quarterly thereafter on each January 1st, April 1st, July 1st and October 1st in each of the years 1969 to 1983, inclusive and on January 1, 1984 (or if any such date is not a business day on the next succeeding business day).

The term "Settlement Date" with respect to a Group of the Equipment shall mean such date (on or prior to March 31, 1969), not more than five business days following presentation by such Manufacturer to Leasing, in form and substance satisfactory to it and to its counsel, of (i) the invoice or invoices covering the Purchase Price for each unit of Equipment in the Group, (ii) the Certificate or Certificates of Inspection and Acceptance for the units of Equipment in the Group and (iii) such other documents as Leasing may reasonably request, as shall be fixed by Leasing by written or telegraphic notice delivered to and received by the Vendor at least five business days prior to the Settlement Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

Interest under this Agreement shall be determined on the basis of a 360-day year of four 90-day quarters and of twelve 30-day months.

Leasing will pay, to the extent legally enforceable, interest at the rate of 8% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 5 hereof, Leasing shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

The obligation of Leasing under this Agreement to accept delivery of and pay for any Equipment shall, in addition, be subject to the satisfaction of the conditions set forth in Section 3 of the Acquisition Agreement. The payment, pursuant to Section 2 of the Acquisition Agreement, by Leasing on a Settlement Date of the amount referred to in subparagraph (a) of the third paragraph of this Article 3 shall be conclusive evidence of such satisfaction.

ARTICLE 4. *Title to the Equipment.* The Vendor shall and hereby does retain the full legal title to and property in the Equipment until Leasing shall have made all of the payments hereunder and shall have kept and performed all their agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by Leasing or the Guarantor as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of



this Agreement and included in the term "Equipment" as used in this Agreement. Racks installed upon or within Equipment shall not be included in the term "Equipment".

When and (subject to Article 5 hereof) only when the Vendor shall have been paid the full amount of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all Leasing's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in Leasing without further transfer or action on the part of the Vendor except that the Vendor if requested by Leasing, will execute appropriate instruments confirming such passage to Leasing of title to such property in the Equipment free of all liens and encumbrances created or retained hereby and deliver such instruments to Leasing at its address specified in Article 20 hereof, and will execute in the same manner and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of Leasing to the Equipment, and will pay to Leasing any money paid to the Vendor pursuant to Article 5 hereof and not theretofore applied as therein provided.

Leasing hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instruments or to file such certificate within a reasonable time after written demand of Leasing.

ARTICLE 5. *Sale and Replacement of Equipment.* In the event than an "Event of Loss" (as defined in the Lease)

or probable Event of Loss shall occur, Leasing shall promptly (after it has knowledge of such Event of Loss) fully inform the Vendor in regard thereto, of the Stipulated Loss Value (as defined in the Lease) thereof and of the Guarantor's election of alternative (i) or (ii) pursuant to Section 10 of the Lease. If the Guarantor elects alternative (i), Leasing, on the date of payment of the next succeeding quarterly instalment of the Conditional Sale Indebtedness following receipt of the Stipulated Loss Value from the Guarantor under the Lease, shall pay to the Vendor a sum equal to the Stipulated Loss Value of such unit or units of Equipment as of the date of such payment. Each such payment shall be accompanied by notation from Leasing as to the unit or units of the Equipment in respect of which such payment is being made and of the Stipulated Loss Value thereof.

Any money paid to the Vendor pursuant to the next preceding paragraph shall be applied immediately upon receipt thereof by the Vendor to the prepayment of the Conditional Sale Indebtedness then outstanding incurred in respect of such unit or units suffering an Event of Loss plus interest then accrued on the portion thereof so prepaid, but without premium, and any remainder paid by the Vendor to Leasing. Vendor shall be entitled to rely upon a certificate of an officer of Leasing as to determination of the amount to be applied to such prepayment and such remainder. The quarterly payments of the Conditional Sale Indebtedness, and interest thereon, becoming due thereafter shall be redetermined on the basis of the Conditional Sale Indebtedness remaining unpaid and on the basis of the number of quarterly payments remaining immediately after such application.

Upon payment by Leasing to the Vendor of the Stipulated Loss Value of any unit of the Equipment having suf-

ferred an Event of Loss or upon the accession of a unit of railroad equipment to this Agreement to replace a unit of Equipment having suffered an Event of Loss pursuant to the following paragraph of this Agreement, absolute right to the possession of, title to and property in such unit of Equipment having suffered an Event of Loss shall pass to and vest in Leasing or the Guarantor, as the case may be, entitled to the possession of such unit pursuant to Section 10 of the Lease, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by Leasing, will execute and deliver to Leasing or the Guarantor, as specified in such request, at its address specified in Article 20 hereof, at the expense of Leasing or its assigns or the Guarantor, as the case may be, an appropriate instrument confirming such passage to Leasing or its assigns or the Guarantor, as the case may be, of title to and property in such unit, in recordable form in order that Leasing or its assigns or the Guarantor, as the case may be, may make clear upon the public records the title of Leasing or its assigns or the Guarantor, as the case may be, to such unit.

Leasing will cause any replacement unit or units to be marked as provided in Section 9(b) of the Lease. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances except permitted liens as defined in Article 9 hereof and shall be taken in the name of the Vendor subject to the provisions hereof, and Leasing shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacements to come under and be

subject to this Agreement. The documents to be provided by Leasing shall include, but not be limited to, the following:

(1) a certificate of a Vice President or the Chief Mechanical Officer of the Guarantor certifying that such replacement unit is of the same nature as the item of Equipment with respect to which an Event of Loss occurred and has a value and utility at least equal to, and is in as good operating condition as the item of Equipment was required by the Lease to have been in immediately prior to the occurrence of such Event of Loss;

(2) an opinion of counsel for the Guarantor that title to such replacement unit is vested in the Vendor free and clear of all liens, security interests and other encumbrances except the rights of Leasing under this Agreement, and that such unit has come under and become subject to this Agreement;

(3) a bill of sale to the Vendor from the owner of such replacement unit in form and substance satisfactory to the Vendor; and

(4) an opinion of counsel for Leasing that all necessary recording with respect to the unit of replacement equipment has been accomplished.

All such replacement units shall be guaranteed and warranted in like manner as the original Equipment delivered hereunder, and the manufacturer or seller of such replacement units shall, if other than a Manufacturer, duly consent to the subjection thereof to this Agreement and shall agree to be bound by all the terms and provisions contained herein with respect to such replacements in like manner as the Manufacturers are with respect to the original Equipment delivered hereunder.

Notwithstanding the provisions of Section 10 of the Lease, Leasing shall not abandon any unit of the Equipment until the Stipulated Loss Value, if any, for such unit has been paid to the Vendor.

The obligation of Leasing to pay money upon an Event of Loss as provided for by this Article 5 may be satisfied by Guarantor's delivery to Leasing of title to another item of Equipment of the same nature as the item of Equipment with respect to which an Event of Loss has occurred, all as set forth in Section 10 of the Lease.

ARTICLE 6. *Guaranty of the Guarantor.* The Manufacturers shall have no obligation to deliver the Equipment pursuant to Article 2 hereof unless the Guarantor shall have executed the Lease containing a guarantee substantially in the form contained in Section 14 of Exhibit A hereto.

ARTICLE 7. *Reports and Inspections.* On or before the 15th of April, in each year, commencing with the year 1969, the Guarantor will furnish to the Vendor, concurrently with the transmission thereof to Leasing, copies of each and every report or statement to be furnished to Leasing by the Guarantor pursuant to Section 12 of the Lease. The Vendor shall have the right, by its agents, to inspect the Equipment and records of Leasing and the Guarantor with respect thereto once in every year.

ARTICLE 8. *Possession and Use.* Leasing, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturers to Leasing, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

Leasing may lease the Equipment to the Guarantor or its assigns as permitted by, and for use as provided in Sections 9 and 13 of the Lease, *provided, however*, that the Guarantor acknowledges in the Lease, that the rights of the Guarantor and its permitted assigns under the Lease are subordinated and junior in rank to the rights, and are

subject to the remedies, of the Vendor under this Agreement. The Vendor will not terminate or impair the Guarantor's possession or use of the Equipment subject to the Lease so long as the Guarantor is not in default pursuant to Section 15 of the Lease and the Agent has received the Rent (as defined in the Lease). Leasing hereby agrees that it will not exercise any of the remedies provided in Section 16 of the Lease unless it shall notify the Vendor in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summons, writs, processes and other documents served by them upon the Guarantor or served by the Guarantor upon them in connection therewith.

ARTICLE 9. *Prohibition Against Liens.* Leasing will pay or satisfy and discharge any and all sums claimed by any party by, through or under Leasing or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the non-payment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent (such liens being herein called permitted liens).

ARTICLE 10. *Indemnities.* The Vendors shall have no duty to deliver any Equipment under this Agreement, unless

prior thereto the Guarantor shall have entered into an indemnity substantially in the form of Section 11 of Exhibit A hereto and Canadian National Railway Company, a corporation duly organized and existing under the laws of Canada, shall have entered into an agreement with Leasing for the benefit of the Vendors in form satisfactory to the Vendors and Leasing guaranteeing the obligations of Guarantor under the Lease.

Leasing will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any or all units of the Equipment.

Each Manufacturer guarantees to Leasing and for the benefit of the Guarantor that the units of the Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 1 hereof and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by Leasing or the Guarantor and not manufactured by such Manufacturer as to which the Manufacturer has been unable to secure a similar guaranty and warranty from the supplier thereof after exercising reasonable efforts to do so) or workmanship under normal use and service, each Manufacturer's obligation under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment (except as set forth in the following paragraph) which shall, within one year after delivery of such unit to Leasing, be returned to such Manufacturer with transportation charges prepaid and which such Manufacturer's examination shall disclose to its satisfaction to have been thus defective. This warranty is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a partic-

ular purpose, and of all other obligations or liabilities on the part of such Manufacturer, except for its obligations under Articles 1, 2, 3 and 11 hereof, and each Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid. Each Manufacturer further agrees with Leasing that the acceptance of any units by Leasing under Article 2 hereof shall not be deemed a waiver by Leasing of any of its rights under this paragraph.

In addition to the foregoing warranty, Pullman guarantees that the HYDROFRAME CUSHION UNITS (which consist of the hydraulic cylinder and return spring) sold by it under this Agreement will be free from defects in material and workmanship under normal use and service. Its obligation under this special warranty shall be limited to making good at its HYDROFRAME plant at Hammond, Indiana any HYDROFRAME cushion unit which shall, within five (5) years after delivery of the unit, be returned to it, with seal intact, with transportation charges prepaid to such plant and which Pullman's examination shall disclose to its satisfaction to have been thus defective.

ARTICLE 11. *Patent Indemnities.* Except in cases of designs specified by Leasing or the Guarantor and not developed or purported to be developed by either Manufacturer and articles and materials specified by Leasing or the Guarantor and not manufactured by such Manufacturer and as to which such Manufacturer has been unable to secure a similar indemnity to that hereafter referred to from the supplier thereof after exercising reasonable efforts to do so, such Manufacturer agrees to indemnify, protect and hold harmless Leasing from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in



any manner imposed upon or accruing against Leasing because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right. The Guarantor (in the Lease) likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design specified by Leasing or the Guarantor and not developed or purported to be developed by such Manufacturer, or article or material specified by Leasing or the Guarantor and not manufactured by such Manufacturer, which infringes or is claimed to infringe on any patent or other right and as to which such Manufacturer has been unable to secure a similar indemnity to that hereafter referred to from the supplier thereof after exercising reasonable efforts to do so. Each Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to Leasing every claim, right and cause of action which such Manufacturer has or hereafter shall have against the originator of any design or against the seller or sellers of any designs or articles or materials purchased or otherwise acquired by such Manufacturer for use in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on any patent or other right and such Manufacturer further agrees to execute and deliver to the Trustee all and every such further assurance as may be reasonably requested by the Trustee,

more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. Each Manufacturer will give notice to the Trustee and the Guarantor of any claim known to such Manufacturer from which liability may be charged against the Guarantor hereunder and the Guarantor and the Trustee will give each notice to such Manufacturer of any claim known to it from which liability may be charged against such Manufacturer hereunder.

ARTICLE 12. *Assignments.* Leasing will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 8 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor; *provided, however,* that Leasing may sell, assign, transfer and dispose of its rights hereunder to the Trustee and at any time thereafter the Trustee may sell, assign, transfer or dispose of its rights hereunder to Leasing. Leasing and the Trustee hereby unconditionally covenant and agree with the Vendor that if such a sale, assignment or transfer shall be made by Leasing to the Trustee or by the Trustee to Leasing, the Trustee (subject to the provisions of the Trust Agreement) or Leasing, as the case may be, shall duly and punctually pay all sums payable by Leasing or the Trustee, as the case may be, under this Agreement and shall duly and punctually perform all obligations and undertakings of Leasing or the Trustee, as the case may be, under this Agreement and shall faithfully observe all of the terms, covenants and conditions herein contained which are to be observed by Leasing or the Trustee, as the case may be, so that the Vendor shall receive all payments receivable by the Vendor under this Agreement or the Lease and shall enjoy the benefits of all the terms, covenants and conditions stated in

this Agreement or in the Lease which inure to the benefit of the Vendor under this Agreement with the same effect as though the Lease continued in full force and effect until payment in full of all of the Conditional Sale Indebtedness together with interest thereon. No such sale, assignment or transfer shall subject the Vendor to any duties, obligations or liabilities whatsoever.

Upon assignment of its rights under this Agreement by Leasing to the Trustee or by the Trustee to Leasing, Leasing or the Trustee, as the case may be, shall have no further obligations of any nature whatsoever hereunder except as specifically provided to the contrary in this Agreement.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by Leasing and the benefits arising from the undertakings of the Guarantor under the Lease, may be assigned by the Vendor and reassigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturers from, any of the obligations of the Manufacturers to construct and to deliver the Equipment in accordance herewith or to respond to their respective guaranties, warranties and agreements contained in Articles 10 and 11 hereof, or relieve Leasing or the Guarantor of their respective obligations to each Manufacturer under Articles 2, 6, 10 and 11 hereof, subparagraph (a) of the third paragraph of Article 3 hereof or under Sections 5(b), 11, 12, 14 and 16 of the Lease or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to Leasing and the Guarantor, together with a counterpart or copy of such

assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all of the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by Leasing and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by Leasing or the Guarantor hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

Leasing and the Guarantor (in the Lease) recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some or all of the rights of the Vendor hereunder, is contemplated. Leasing and the Guarantor (in the Lease) expressly represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid Conditional Sale Indebtedness or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of either Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebted-

ness or liability at any time owing to Leasing or the Guarantor by such Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by Leasing or the Guarantor, as the case may be, against and only against such Manufacturer.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, Leasing will, whenever requested by such assignee, change the names and word or words to be marked on each side of each unit of the Equipment or, in the event such unit shall then be leased to the Guarantor, the Guarantor shall change the names and word or words to be marked on each side of such unit, so as to indicate the title of such assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such names and word or words with respect to the first assignee of this Agreement (or to a successor agent or trustee in case the first assignee is an agent or trustee) shall be borne, respectively, by each Manufacturer. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent or trustee if the first assignee is an agent or trustee) will be borne by the subsequent assignee.

In the event of any such assignment prior to the completion of delivery of the Equipment, Leasing will, in connection with settlement for any Group of Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery by Leasing of notice fixing the Settlement Date with respect to such Group, all documents

required by the terms of such assignment to be delivered to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

ARTICLE 13. *Limitation of Leasing's Obligations.* Notwithstanding any other provision of this Agreement, it is understood and agreed by the Vendor that all payments to be made by Leasing under and pursuant to this Agreement, with the exception only of the payment to be made pursuant to subparagraph (a) of the third paragraph of Article 3 hereof, shall be made only from the income and proceeds from the Equipment, and Leasing's liability hereunder shall be limited thereto.

As used herein the term "income and proceeds from the Equipment" shall mean if an event of default specified in Article 14 hereof shall have occurred and while it shall be continuing so much of the following amounts as are indefeasibly received by Leasing at any time after such event and while continuing: (a) all amounts of Rent under the Lease and amounts in respect of Events of Loss paid for or with respect to the Equipment pursuant to the Lease, and (b) any and all payments or proceeds so received by Leasing after the termination of the Lease for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition, and shall mean at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by Leasing and as shall equal the portion of the Conditional Sale Indebtedness which is at the time of receipt due and payable hereunder plus interest and after giving effect to any concurrent reduction thereof.

Nothing contained herein shall derogate from the right of the Vendor to proceed against the Equipment or the Guarantor for the full amounts owing to the Vendor hereunder. The Vendor agrees, however, that in the event it shall obtain a judgment against Leasing for an amount in excess of the amounts payable by Leasing pursuant to the limitations set forth in this Article 13, it will, accordingly, limit its execution of such judgment to such amount.

ARTICLE 14. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) Leasing or the Guarantor shall fail to pay in full any sum payable by Leasing or the Guarantor hereunder or under the Lease, respectively, or Canadian National Railroad Company, a corporation duly organized and existing under the laws of Canada, shall fail to pay in full any sum payable by it pursuant to its guaranty referred to in Article 18 of the Finance Agreement or its guaranty referred to in Section 2 of the Lease when payment thereof shall be due hereunder and such default shall continue for 20 days; or

(b) Leasing or the Guarantor shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement or the Lease, as the case may be, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to Leasing and the Guarantor and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, if there has been an Event of Default under the Lease, cause the Lease immediately upon such notice to terminate and/or declare the entire Conditional Sale In-

debtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at the rate of  $7\frac{1}{4}\%$  per annum, to the extent legally enforceable, and the Vendor shall thereupon be entitled, subject to the provisions of Article 13 hereof, to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Guarantor wherever situated or out of property of Leasing subject to the limitations provided in Article 13 hereof.

The Vendor may waive any such event of default and its consequences and rescind and annul any such declaration by notice to Leasing and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by Leasing that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 15. *Remedies.* If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire Conditional Sale Indebtedness shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirement of law then in force and applicable to the action to be taken by the Vendor and provided that there



has been an Event of Default under the Lease, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to Leasing or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 15 expressly provided, and may remove the same from possession and use of Leasing and the Guarantor and for such purpose may enter upon the premises of Leasing or the Guarantor or where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of Leasing or the Guarantor, with or without process of law.

In case the Vendor shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Guarantor for the delivery of the Equipment to the Vendor, the Guarantor shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be reasonably designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor; and, at the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Guarantor agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against Leasing

or the Guarantor requiring specific performance hereof. Leasing and the Guarantor hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire Conditional Sale Indebtedness shall have been declared immediately due and payable as hereinbefore provided, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 15 provided) may at its election retain the Equipment as its own and make such disposition thereof as the Vendor shall deem fit, and in such event all rights of Leasing in the Equipment will thereupon terminate and all payments made by Leasing or the Guarantor may be retained by the Vendor as compensation for the use of the Equipment by Leasing; or the Vendor with or without the retaking of possession thereof may, at its election, sell the Equipment, or any unit thereof, free from any and all claims of Leasing, or of any other party (including the Guarantor) claiming by, through or under Leasing, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine, and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement; *provided, however,* that if Leasing, within 20 days of receipt of notice of the Vendor's election to retain the Equipment for its own use, as hereinafter provided, or prior to any sale by the Vendor of the Equipment, as herein

provided, shall pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in Leasing. Written notice of the Vendor's election to retain the Equipment for its own use may be given to Leasing by mail addressed to Leasing as provided in Article 20 hereof, at any time during a period of 30 days after the Conditional Sale Indebtedness shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Vendor shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 15.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, provided that Leasing and the Guarantor shall be given written notice of such sale not less than ten days prior thereto, by mail addressed as provided in Article 20 hereof. If such sale shall be a private sale, it shall be subject to the right of Leasing to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to Leasing (except to the extent of surplus money received as hereinafter provided in this Article 15), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from Leasing hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

All sums of money realized by the Vendor under the remedies herein provided shall be applied, *first* to the payment of the expenses and liabilities of the Vendor herein undertaken to be paid, *second* to the payment of interest on the Conditional Sale Indebtedness accrued and unpaid and *third* to the payment of the Conditional Sale Indebtedness. If, after applying as aforesaid all sums of money realized by the Vendor, there shall remain any amount due to it under the provisions of this Agreement, Leasing, subject to the provisions of Article 13 hereof, shall pay the amount of such deficiency to the Vendor upon demand, and, if Leasing shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against Leasing, subject to the provisions of Article 13 hereof. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to Leasing.

Leasing, subject to the provisions of Article 13 hereof, will pay all reasonable expenses, including attorneys' fees,

incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 15 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 16. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by Leasing, to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, Leasing, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 17. *Extension not a Waiver.* No delay or omission in the exercise of any power or remedy herein

provided or otherwise available to the Vendor shall impair or affect the Vendor's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to Leasing shall not otherwise alter or affect the Vendor's rights or the obligations of Leasing or the Guarantor under the Lease. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect Leasing's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 18. *Recording.* Leasing will cause this Agreement, the first assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and refiled, re-recorded or redeposited, if necessary, with the Interstate Commerce Commission and will duly cause the Lease, this Agreement and Finance Agreement to be deposited and notice of such deposit given in the *Canada Gazette*, under Section 148(1) and (2) of the Railway Act (Canada) R.S.C. 1952, Chapter 234, as amended by 14-15-16 Eliz. II, Chapter 25 and otherwise as may be required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and Leasing will promptly furnish to the Vendor certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for Leasing with respect thereto, satisfactory to the Vendor.

ARTICLE 19. *Payment of Expenses.* Leasing or the Guarantor and Leasing (notwithstanding any assignment of its rights hereunder) will pay in such proportions as they may agree upon in writing prior to or concurrently with the execution of this Agreement the reasonable costs

and expenses, including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgement, delivery, filing or recording of this Agreement, of the first assignment by the Vendor of this Agreement, of any instrument supplemental to or amendatory of this Agreement or such first assignment, and of any certificate of the payment in full of indebtedness in respect of the Purchase Price of the Equipment due hereunder, and the reasonable fees and disbursements of Messrs. White and Case, counsel to the Trustee, and Messrs. Davis Polk & Wardwell, special counsel to the proposed first assignee of the Vendor of this Agreement (Morgan Guaranty Trust Company of New York) and Messrs. Sullivan & Cromwell, special counsel to the parties proposing to acquire interests in such first assignment. For purposes of this Article 19, if the first assignee is an agent or trustee, then any successor to such agent or trustee shall be considered the first assignee.

ARTICLE 20. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to Leasing at 570 Lexington Avenue, New York, New York 10022,

(b) to the Trustee, at 16 Wall St., New York, New York 10005,

(c) to the Guarantor, at 131 West Lafayette St., Detroit, Michigan 48226,

(d) to Pullman, at 200 South Michigan Avenue, Chicago, Illinois 60604,

(e) to Thrall, at P. O. Box 218, Chicago Heights, Illinois 60411,

(f) to any assignee of the Vendor at such address as may have been furnished in writing to the Trustee,

or the Vendor, as the case may be, and to the Guarantor, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. Leasing represents and warrants that its residence and its chief places of business is in New York.

ARTICLE 21. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 22. *Effect and Modification of Agreement and Lease.* This Agreement, and the schedule relating hereto, together with the Lease and the Acquisition Agreement, exclusively and completely state the rights and agreements of the Vendor, Leasing and the Guarantor with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor and Leasing. Leasing, without the prior written consent of the Vendor, will not consent to any amendment, modification, waiver or supplement to the Lease, or, except in accordance with Section 16 thereof, cancel or terminate the Lease prior to the payment in full of the Conditional Sale Indebtedness together with interest thereon.

ARTICLE 23. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and by Section 148(1) and (2) of the Railway Act (Canada)



R.S.C. 1952, Chapter 234, as amended by 14-15-16 Eliz. II, Chapter 25 and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. *Definitions.* The term "Vendor", whenever used in this Agreement, means, collectively, before any assignment of any of its rights hereunder, Pullman, Incorporated (Pullman-Standard division) and Thrall Manufacturing Company and any successor or successors for the time being to their respective manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor or assignors as regards any rights hereunder that are retained and excluded from any assignment; and the term "Manufacturer", whenever used in this Agreement, means, both before and after any such assignment, either Pullman, Incorporated (Pullman-Standard division) or Thrall Manufacturing Company and any successor or successors for the time being to its respective manufacturing properties and business.

ARTICLE 25. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

PULLMAN, INCORPORATED  
(Pullman-Standard division)

[CORPORATE SEAL]

By \_\_\_\_\_  
*Vice President*

Attest:

\_\_\_\_\_  
*Assistant Secretary*

THRALL CAR MANUFACTURING  
COMPANY

[CORPORATE SEAL]

By J A Thrall  
*Vice President*

Attest:

W F Hunt  
*Assistant Secretary*

GECC LEASING CORP.

[CORPORATE SEAL]

By \_\_\_\_\_  
*Vice President*

Attest:

\_\_\_\_\_  
*Assistant Secretary*

STATE OF <sup>ILLINOIS</sup> ~~NEW YORK~~ }  
COUNTY OF <sup>COOK</sup> ~~NEW YORK~~ } ss.:

On this 27<sup>th</sup> day of November, 1968, before me personally appeared J. A. Thrall, to me personally known, who, being by me duly sworn, says that he is a Vice President of THRALL CAR MANUFACTURING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of the said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

*Renata E. Staschke*  
*expires 12-14-68*

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

On this ---- day of November, 1968, before me personally appeared -----, to me personally known, who, being by me duly sworn, says that he is a Vice President of PULLMAN, INCORPORATED (Pullman-Standard division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

On this -- day of November, 1968, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says he is a Vice President of GECC LEASING CORP., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

## SCHEDULE A

### THRALL CAR MANUFACTURING COMPANY

<u>No. of Units</u>	<u>Description</u>	<u>Manufacturer &amp; Plant</u>	<u>Specifications*</u>	<u>Identify- ing Nos.</u>	<u>Estimated Unit Price</u>	<u>Approximate Delivery Schedule</u>	<u>Delivery Point</u>
105	100-ton 86'-6" high cube box cars	Thrall Car Manufacturing Company, Chicago Heights, Illinois	BX-C-100 -86-102	GTW 306075- 306179 both inclusive	\$27,669.00	November and December, 1968	Illinois

\* Cars are to be constructed in accordance with the specifications and drawings referred to in the correspondence referred to in Exhibit B to the Lease.

**EXHIBIT A:**

Lease of Railroad Equipment

See Document No. 5 in this volume.

**EXHIBIT B:**

Acquisition Agreement

See Document No. 6 in this volume.

**EXHIBIT C:**

Trust Agreement

See Document No. 7 in this volume.